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Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re: TV-32 DIGITAL VENTURES INC., a California corporation, Tax ID: 20-1198608 Debtor.	Case No. 09-58098 ASW 11 Chapter 11 DEBTOR'S CHAPTER 11 STATUS CONFERENCE COUNTER STATEMENT Date: January 3, 2011 Time: 9:45 a.m. Courtroom: 3020, 3rd Floor The Honorable Arthur S. Weissbrodt

TO: THE HONORABLE ARTHUR S. WEISSBRODT, UNITED STATES BANKRUPTCY JUDGE:

TV-32 DIGITAL VENTURES INC., Debtor and Debtor-in-Possession (the "Debtor") hereby respectfully submits its Chapter 11 Status Conference Statement in response to that of the Small Business Administration (SBA).

I. Case Status

In an effort to secure SBA support, on December 20, 2010, Debtor presented to the SBA proposed modifications to the Debtor's Third Disclosure Statement and Plan ("Plan"). The proposed modifications were:

- Debtor would delete reliance upon KMTP TV lease revenues predicated upon grants from the Corporation for Public Broadcasting and projected revenues from Sezmi Corporation.
- Debtor will now rely on (1) committed revenues from leasing to existing/long term tenants to support debt service to Sterling Savings Bank, the SBA, current taxes and payments provided by the Plan; the Debtor further relies on (2) new tenants and Mr. Wade's family for a cash infusion of funding for the first eight months at which point brokers have advised Debtor that new tenants could be secured.
- Lease agreements in place with New Tang Dynasty TV, Sound of Hope Radio and KMTP TV that provide sufficient revenues to pay debt service, taxes and payments provided by the Plan. The KMTP TV lease is supported by an agreement with RAI Corporation, an American-based unit of the Government of Italy.
- Debt service to SBA to begin upon plan confirmation.
- Debtor engaging a broker for marketing vacant space in the building, rather than self-marketing. Broker marketing will eliminate the direct and associated costs of employment by Debtor of a Building Marketing Manager.

Together with the proposed modifications presented to the SBA, the Debtor submitted more than a hundred pages of supporting documents. The documents were as follows:

- Letters of tenancy history from New Tang Dynasty TV, Sound of Hope Radio and KMTP;
- Leases from New Tang Dynasty TV through 2012, Sound of Hope Radio through November January 2012 and KMTP TV through 2011;
- A detailing of a 10-year Agreement with RAI Corporation which now provides $121,164 annually to KMTP TV;
- A Pledge of the RAI Corporation revenues by KMTP TV to Debtor to support its lease;

- A Pledge by Rosa Wade Ware, sister of Wade, to provide Debtor with sufficient funding to support negative cash flows through August 2010, together with an institutional account financial statement showing the availability of such funding;
- Revised financial projections and notes, assumptions and basis as to the financial projections; and
- Tax returns for New Tang Dynasty TV, Sound of Hope and KMTP TV.

II. Cash Flow Issues

A. SBA Position

The overall position of the SBA is that while there is sufficient detailing of revenues for the first eight months of operations, there is insufficient "documentary proof" that the Debtor will have sufficient cash flow to implement the Plan beyond August 2011. The Debtor acknowledges that SBA has the discretion to inform itself, evaluate Debtor's Plan and reach its own conclusions. However, Debtor maintains that any creditor, including the SBA, must generally do so in good faith and that the SBA must act to advance the best interests of taxpayers. On balance, the SBA position appears to be that the Debtor's Plan is speculative, unless the Debtor *currently* has in place 3-year leases from existing and future tenants cumulatively sufficient to pay all Plan obligations over the next three years[1] without which the SBA will abandon any efforts to collect any amounts due and permit a foreclosure sale.

B. Debtor's Position

There are leases and other commitments currently in place to satisfy debt service to the secured lenders, including SBA, current taxes and the proposed Plan payments. The SBA requirement to have in place leases from *future* tenants is disingenuous. It is an "all now or nothing at all" approach, bordering on the irrational. The alternative for the SBA is to acquiesce

[1] Of course if the Debtor had the capacity to pay all operating expenses, the need for re-organization would be questionable.

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to a foreclosure sale which likely will produce a deficiency. It is difficult to determine how that approach is in good faith or serves the SBA's and taxpayer interests.[2]

III. Steven's Contingent Liability

The position of the SBA is that the contingent liability of Arlene Stevens ("Stevens") must be extinguished. Because there is no articulation as to how extinguishment would affect - beneficially or detrimentally - the interests of the SBA, the Debtor concludes that the SBA is simply arguing a "red herring."

The SBA notes that the arbitrator in the underlying property division adjudication between Wade and Stevens concluded that the property settlement agreement "…is *conditioned* on removal of Ms. Stevens as a guarantor." However, the arbitrator's opinion also contains other inconsistent, and Debtor submits, pivotal language. At page 1, sixth paragraph, the arbitrator concludes:

> "The Settlement *contemplates* that Mr. Wade would remove her as a guarantor either through a refinance, negotiations with the lenders or a sale of the property."[Emphasis added.]

"Contemplate" is defined as: to examine thoughtfully, to ponder, to have in mind as an intention or possibility and to consider. None of these meanings includes a definite obligation or compulsion as the SBA argues. Importantly, the arbitrator did not view the charge to Wade to secure a release for Stevens as a compulsory or definitive condition. While the arbitrator concluded that absent securing a release for Stevens, a sale of the property was sufficient, the arbitrator did not recognize there would be a deficiency.

Under the circumstances in this case, there is simply no way for the Debtor or Mr. Wade to protect or diminish Ms. Stevens' guaranty exposure beyond the provisions of the Plan.

The Settlement required that Wade and Stevens exercise good faith in its implementation. As noted, Wade had the responsibility to seek refinancing of the property which could have

[2] Debtor received a letter dated December 21, 2010, from the SBA servicing agent noticing an acceleration of the SBA loan coupled with a demand for payment, in violation of the automatic stay. Debtor submits that this reflects an effort to preclude Debtor from tendering the delinquency and reflects a lack of good faith.

terminated Stevens' contingent liability. However, as detailed in the statement by Wade submitted contemporaneously, Stevens frustrated Wade's efforts at refinancing and dissipated joint funds under her control and forfeited assets, all precluding her protection and precluding Wade from otherwise servicing lenders' debt to protect her.

IV. Further Actions

The Debtor proposes to continue its discussions with the SBA seeking to reach an accommodation that would enable the SBA to endorse Debtor's proposed Plan as modified. The concerns of the SBA that Debtor will seek to resolve are:

(a) Evidence of currently executed and valid leases for 2011 income to support the financial projections;

(b) Evidence of prospective lease agreements, past negotiations, or prospective renters for future lease income;

(c) Evidence since the debtor has listed the real property for the past few months of prospective tenants renters for the additional space;

(d) A contingency in the event of an inability to secure future tenants; and

(e) A plan for voluntary sale of the property.

V. Conclusion

The SBA through its prior agent, Capital Access Group and its prior counsel, have led the Debtor to believe that it supported its Plan and would vote for its approval. SBA may be entitled to discharge its counsel and agent and withdraw that support. However, Debtor should be given a reasonable opportunity to modify and secure substitute support for its Plan. Debtor requests that the Court set a consolidated disclosure and confirmation hearing for the first week of April, 2012.

Dated: December 30, 2010 PINNACLE LAW GROUP LLP

By: /s/ Matthew J. Shier
Matthew J. Shier, Attorneys for
TV-32 DIGITAL VENTURES INC., Debtor
and Debtor-in-Possession

CERTIFICATE OF SERVICE

I am employed in the office of a member of the bar of this Court in the City and County of San Francisco, at whose direction this service was made. I am over the age of 18 and not a party to the within action. My business address is 425 California Street, Suite 1800, San Francisco, California 94104.

On December 30, 2010, I served the documents described as:

DEBTOR'S CHAPTER 11 STATUS CONFERENCE STATEMENT

on the interested parties in this action by placing [ ] the original [X] true copies thereof enclosed in sealed envelopes addressed as follows:

Arlene Stevens
P.O. Box 51310
Palo Alto, CA 94303

Arlene D. Stevens
3575 Tripp Road
Woodside, CA 94062-3635

Capital Business Group, Inc.
d/b/a Capital Access Group
150 California Street, Suite 250
San Francisco, CA 94111-4526

TV-32 DIGITAL VENTURES INC.
c/o Booker T. Wade
605 Forest Avenue
Palo Alto, CA 94301

Attention: CHAMBERS COPIES
The Honorable Arthur S. Weissbrodt
United States Courthouse, Room 3020
280 South First Street
San Jose, CA 95113-3099

[X] U.S. MAIL: Service was accomplished by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed as set forth above.

[X] BY E-MAIL/NEF: Service was accomplished through the Notice of Electronic Filing ("NEF") for parties and counsel who are registered ECF Users.

Office Of The United States Trustee
USTPRegion17.SJ.ECF@usdoj.gov,
ltroxas@hotmail.com

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U.S. Small Business Administration
455 Market St. 6th Fl.
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edwin.joe@sba.gov

I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Executed on December 30, 2010, at San Francisco, California.

/s/ Mike Terry
MIKE TERRY